IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7901 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANIBEN MOTIBVHAI PADHIYAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7901 of 2004

MR DIPEN C SHAH for Petitioner No. 1-4

MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 15/07/2004

ORAL JUDGEMENT

Rule. Mr.Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing

today.

2. In the present Special Civil Application under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat Revenue Tribuna dated 12.5.2003 in Revision Application No. TEN.B.A.No.101 of 2003 in dismissing the revision application on the ground of delay of 72 days in preferring the revision application. In the present Special Civil Application, the petitioners have also challenged the legality and validity of the order passed by the Collector dated 20.11.2002 which was the subject matter of challenge before the Gujarat Revenue Tribunal. Shri Shah, Learned Advocate appearing for the petitioners has submitted that in view of the fact that the petitioners are very poor and it took time to manage for the funds, there was a delay of 72 days in preferring the revision application. He has submitted that considering the merits of the case and status of the petitioners, the Tribunal ought to have condoned the delay and ought to have decided the revision application on merits. He has relied upon the judgement of N.BALAKRISHNAN Vs. M.KRISHNAMURTHY reported in AIR 1998 SC 3222 in support of his submissions for condonation of delay in preferring the revision application.

3. Heard the Learned Advocates appearing on behalf of the parties.

4. The Tribunal has rejected the Revision Application on the ground of limitation on two technical grounds. The Learned Tribunal has held that if the petitioners are poor then they could have approached the Legal Aid Committee. It is True that they could have approached the Legal Aid Committee but considering the facts and circumstances, when it is found that the petitioners are very poor and could not manage for the funds, there was a delay of only 72 days in preferring the revision application and considering the view taken by this Court as well as Supreme Court in catena of decisions that normally the rights of the parties should not be defeated only on the ground of delay, I am inclined to allow the present Special Civil Application by quashing and setting aside the judgment and order dated 12.5.2004 of the Gujarat Revenue Tribunal in Revision Application No. 101 of 2003. Accordingly, the judgment and order dated 12.5.2004 of the Gujarat Revenue Tribunal in Revision Application No. 101 of 2003 is quashed and set aside. The matter is remanded to the Gujarat Revenue Tribunal for deciding the said revision application afresh in accordance with law and on merits.

So far as the challenge to the order passed by the Collector dated 20.11.2002 is concerned, in view of the fact to the Gujarat Revenue Tribunal for deciding the same on merits and the said order is subject matter of challenge before the Gujarat Revenue Tribunal, the prayer for quashing and setting aside the order passed by the Collector dated 20.11.2002 is not entertained at this stage. Rule is made absolute accordingly with no order as to costs.

(M.R.Shah, J)
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